

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In re:

Theresa Marie Boese-Morales,

Debtor.

Case No. 20-40749

Chapter 13 Case
Chief Judge Michael E. Ridgway

NOTICE OF MOTION AND MOTION TO DISMISS CHAPTER 13 CASE

TO: The debtor and other entities specified by Local Rule

1. Peter Linstroth, (“Movant”) by its undersigned counsel, moves the court for the relief requested below and gives notice of hearing.

2. On Wednesday July 14, 2021, at 10:00 a.m., before the Honorable Chief Judge Michael Ridgway, U.S. Bankruptcy Judge, in Courtroom 7 West, United States Courthouse, 300 S. Fourth Street, Minneapolis, Minnesota, the Court will hold a hearing to determine whether this case should be dismissed or converted to a chapter 7 case.

3. Any response to this motion must be filed and delivered not later than Friday July 9, 2021, which is five days before the time set for the hearing, including Saturdays, Sundays, and holidays. See Fed.R.Bank.P. 9006 and Loc. R. Bankr. P. 9006-1(c). **UNLESS A RESPONSE OPPOSING THE MOTION IS TIMELY FILED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.**

4. This court has jurisdiction over this motion pursuant to 28 U.S.C. Sections 157 and 1334, Fed.R.Bankr.P 5005 and Local Rule 1070-1. Movant has standing to file this Motion

pursuant to 11 U.S.C. §1307(c). This proceeding is a core proceeding. The petition commencing this case was filed by the debtor on March 13, 2020.

5. This motion arises under 11 U.S.C. § 1307(c) and Fed. R. Bankr. P. 1017 and 2002. This motion is filed under Fed. R. Bankr. P. 9013, 9014 and Local Rules 9013-1 through 9013-3. Movant requests that this case be dismissed or converted to a case under chapter 7 for the reasons set forth below.

9. The debtor has failed to make contractual payments required by her confirmed chapter 13 case.

WHEREFORE, Movant seeks an order dismissing this case.

DATED: June 15, 2021

WILFORD, GESKE & COOK, P.A.

e/Orin J. Kipp
Orin J. Kipp, #0390438
8425 Seasons Parkway, Suite 105
Woodbury, MN 55125
651-209-3300
Attorneys for Wells Fargo Bank, N.A.

VERIFICATION

I, Orin J. Kipp, attorney for Peter Linstroth, the movant named in the foregoing motion, declare under penalty of perjury that the foregoing is true and correct according to the best of my knowledge, information, and belief.

Executed on: June 15, 2021

Signed: e/Orin J. Kipp
Orin J. Kipp, Esq.

**UNITED STATES BANKRUPTCY COURT
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**MEMORANDUM OF LAW IN SUPPORT OF MOTION
TO DISMISS OR CONVERT CASE TO CHAPTER 7**

Peter Linstroth (“Movant”), by the undersigned counsel, submits this memorandum of law in support of his motion to dismiss this case or convert it to a case under Chapter 7.

FACTS

The debtor is indebted to Movant by a lease agreement dated March 21, 2019 for a residential rental property located at 6212 Interlachen Blvd., Edina, MN 55436. In the Debtor’s confirmed plan, she assumed the lease agreement under part 5 of the plan which states “[t]he debtor assumes the following executory contracts or unexpired leases. Debtor will pay directly to creditors all payments that come due after the date the petition was filed.” Since October 2020 the Debtor has failed to remit any rental payments to Movant. (Affidavit of Peter Linstroth, ¶ 1). As such, the Debtor has failed to comply with the terms of her confirmed chapter 13 plan. Pursuant to the terms of the lease agreement, the monthly rental payment is \$3,585.00. (*Id.*) Debtor is currently delinquent for 9 months of rent, despite the fact that the confirmed plan requires her to pay Movant directly. The current amount of delinquent rental payments is \$32,265.00. (*Id.*) This number does not include late fees and attorney fees which are allowed under the terms of the lease agreement.

ARGUMENT

On the request of a party in interest or the United States trustee and after notice and hearing, the court may convert a case under this chapter to a case under chapter 7 of this title, or may dismiss a case under this chapter, whichever is in the best interests of creditors and the estate...” 11 U.S.C. §1307(c). The decision as to dismissal or conversion under §1307(c) is in the discretion of the court. *In re Henry*, 368 B.R. 696, 701 (N.D. Ill. 2007) (citing *In re Cutillo*, 181 B.R. 13, 14 (Bankr. N.D.N.Y. 1995)).

“Sections 1307(c) and 1112(b) establish a two-step analysis for dealing with questions of conversion and dismissal.” *In re Nelson*, 343 B.R. 671, 675 (B.A.P. 9th Cir. 2006). First, the court must determine that there is “cause” to act. *Id.* Second, once the determination of “cause” has been made, a choice must be made between conversion and dismissal based on the “best interests of the creditors and the estate.” *Id.* (quoting *Ho v. Dowell (In re Ho)*, 274 B.R. 867, 871 (9th Cir. BAP 2002)). Debtor has failed to remain current on her post-petition rental payments which Debtor agreed to pay directly to Movant in her confirmed chapter 13 plan. Under 11 U.S.C. §1307(c)(6), there is a material default by the debtor with respect to the term of a confirmed plan. As such, grounds exist for dismissal.

This rental property is a high-end property with a large monthly rental payment. It is completely unreasonable for Debtor to remain at the premises without making rental payments required by her confirmed plan. Debtor is currently delinquent in the amount of \$32,265.00, which does not include late charges and attorney fees allowable under the lease. Due to the Debtor’s failure to remain current on her post-petition payments Movant requests that this case be dismissed.

CONCLUSION

Due to the Debtors blatant violation of the requirements of her confirmed chapter 13 plan, Movant asks that the case be dismissed.

DATED: June 15, 2021

WILFORD, GESKE & COOK, P.A.

e/Orin J. Kipp
Orin J. Kipp, #0390438
8425 Seasons Parkway, Suite 105
Woodbury, MN 55125
651-209-3300
Attorneys for Movant

VERIFICATION

I, Orin J. Kipp, attorney for Movant, the movant named in the foregoing motion, declare under penalty of perjury that the foregoing is true and correct according to the best of my knowledge, information, and belief.

Executed on: June 15, 2021

Signed: e/Orin J. Kipp
Orin J. Kipp, Esq.

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

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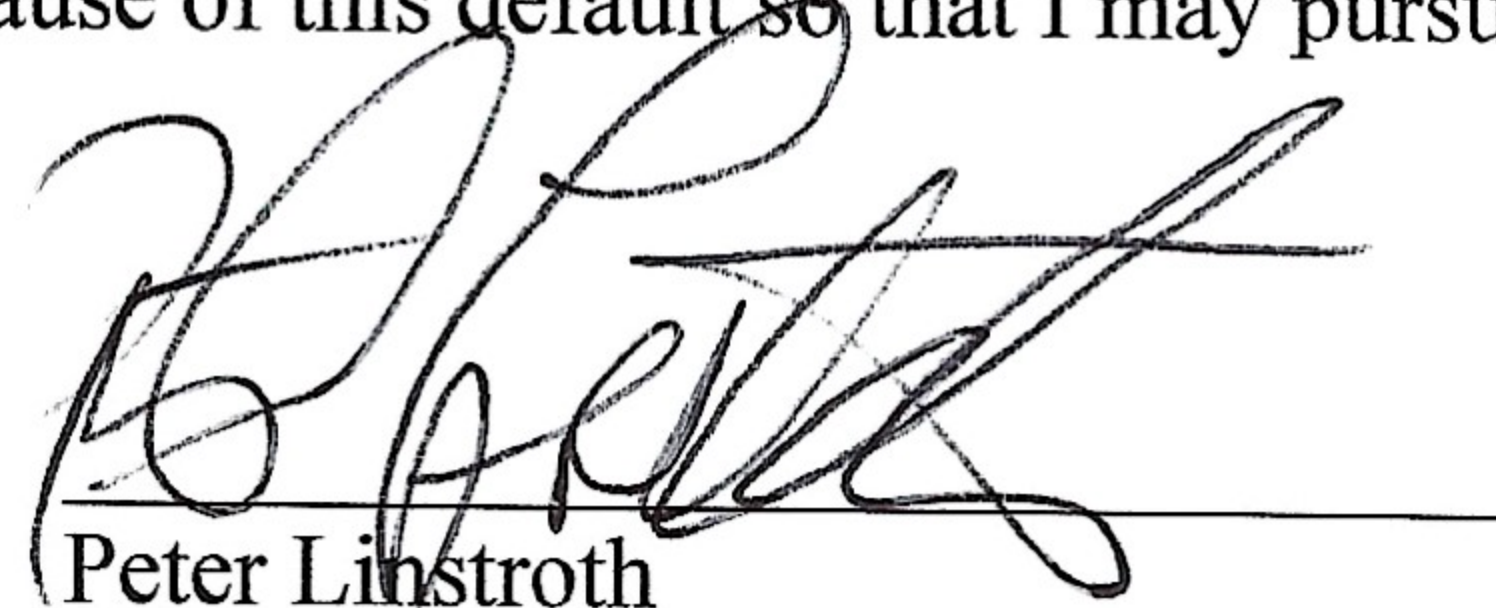
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AFFIDAVIT OF PETER LINSTROTH

I, Peter Linstroth, the movant named in the foregoing motion, declare under penalty of perjury that the foregoing is true and correct according to the best of my knowledge, information, and belief.

1. My tenant, Debtor Theresa Marie Boese-Morales, has not paid a monthly rental payment since October 2020. The monthly rental payment is \$3,585.00. Accordingly, the Debtor is in default in the amount of \$32,265.00 for the nine missing months of rental payments through June 2021.
2. The Debtor affirmed in her confirmed plan that she would remain current on the lease and would make payments directly to me. She has failed to do so and has breached the terms of her confirmed chapter 13 plan.
3. I ask that the court dismiss her chapter 13 case because of this default so that I may pursue my state court nonbankruptcy law remedies.


Peter Linstroth

Subscribed and Sworn To Before Me

This 15th Day of June, 2021.



Notary Public



UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re:

CHAPTER 13 CASE

CASE NO. 20-40749

Theresa Marie Boese-Morales

Debtor.

UNSWORN DECLARATION FOR PROOF
OF SERVICE

Laura Francis, employed by Wilford, Geske & Cook P.A., attorneys licensed to practice law in this Court, with office address at 7616 Currell Blvd; Ste 200, Woodbury, MN 55125-2296, declares that on June 18, 2021, I served the annexed Notice of Motion and Motion to Dismiss Chapter 13 Case, Memorandum in Support of Motion to Dismiss, Affidavit of Peter Linstroth, and proposed Order to each person referenced below, a copy thereof by enclosing the same in an envelope with first class postage prepaid and depositing same in the post office at Woodbury, Minnesota addressed to each of them as follows:

Theresa Marie Boese-Morales
6212 Interlachen Blvd
Edina, MN 55436

and delivered by e mail notification under CM/ECF on the day e-filed with the Court to each of them as follows:

Walter Hodynsky

Gregory A Burrell

U.S. Trustee

And I declare, under penalty of perjury, that the foregoing is true and correct.

Dated: June 18, 2021

/e/ Laura Francis
Laura Francis

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ORDER DISMISSING CASE

This case came before the court on the motion of Peter Linstroth seeking an order dismissing this case. Based upon the arguments of counsel and supporting documents, IT IS ORDERED:

1. Pursuant to 11 U.S.C. §1307(c), the Debtor's failure to comply with her confirmed plan requires that the Debtor's Chapter 13 case be hereby dismissed.

Honorable Chief Judge Michael E. Ridgway
United States Bankruptcy